

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1 recites the limitation "the communication" in line 3. There is insufficient antecedent basis for this limitation in the claim.
4. Claims 4, 5, 6, and 19 recite the limitation "the symptoms" in lines 3-4, lines 2-3, line 3, and line 1, respectively. There is insufficient antecedent basis for this limitation in the claims.
5. Regarding claim 1, the language "optionally" renders the claim indefinite because it is unclear whether the limitations following "optionally" are part of the claimed invention. See MPEP § 2173.05(d).
6. Claims 2, 3, and 7-18, incorporate the deficiencies of claims 1 and 4, through dependency, and are also rejected.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-16 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9. Independent claims 1 and 4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Under the statute, the claimed invention must fall into one of the four recognized statutory classes of invention, namely, a process (or method); a machine (or system); an article of manufacture; or a composition of matter.

In the present case, claims 1 and 4 only recite mental steps. In order to qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. The recited steps of claim 1 of merely organizing information, recommending a solution, checking a solution against information, and optionally indicating a feature that is not suitable are not tied to another statutory class (such as a particular apparatus) and do not transform underlying subject matter (such as an article or materials) to a different state or thing. Similarly, the recited steps of claim 4 of merely receiving symptom information from a patient, organizing the patient's symptoms, specifying an

essence of a condition of the patient, and displaying rubrics are not tied to another statutory class (such as a particular apparatus) and do not transform underlying subject matter (such as an article or materials) to a different state or thing. Therefore, claims 1 and 4 are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-6, 8, 9, 14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Herscu (5,797,839).

(A) Referring to claim 1, Herscu discloses a method for organizing the free flow of information during a consultation on a case, comprising:

organizing the free flow of information obtained through the communication according to a plurality of levels, including at least one general level and one specific level (col. 2, lines 1-12 & 44-62 of Herscu);

recommending at least one solution (abstract of Herscu);

checking said at least one solution against the free flow of information and said organized information (col. 3, line 45 – col. 4, line 26 of Herscu); and

optionally indicating at least one feature of the case that is not suitable for said at least one solution (col. 2, lines 34-41 and col. 8, lines 51-67 of Herscu).

(B) Referring to claim 2, Herscu discloses wherein the method is suitable for medical practice (in which the case is a patient) (see abstract of Herscu).

Insofar as the claim recites "or," it is immaterial whether or not the other elements are also disclosed.

(C) Referring to claim 3, Herscu discloses assisting with follow-up and long term management of a case (col. 14, lines 1-15 of Herscu).

(D) Referring to claim 4, Herscu discloses a method for assisting a homoeopathic practitioner with a patient, comprising (abstract of Herscu):

performing case taking with the patient to receive information about the symptoms (col. 2, lines 46-49 of Herscu);

organizing the symptoms according to a pre-analysis (col. 2, lines 50-53 of Herscu);

specifying an essence of a condition of the patient according to said organized symptoms (col. 3, line 45 – col. 4, line 26 of Herscu); and

displaying a plurality of rubrics according to said essence of said condition (col. 3, line 45 – col. 4, line 26 of Herscu).

(E) Referring to claim 5, Herscu discloses grouping said rubrics according to said essence of said condition and the symptoms; choosing at least one remedy; and

comparing said at least one remedy to said essence of said condition and the symptoms (col. 3, line 45 – col. 4, line 26 and abstract of Herscu).

(F) Referring to claim 6, Herscu discloses justifying a selection of said at least one remedy according to said essence of said condition and the symptoms (col. 4, lines 4-26 of Herscu).

(G) Referring to claim 8, Herscu discloses analyzing further information provided by the patient in a follow-up visit (col. 14, lines 1-14 of Herscu).

(H) Referring to claim 9, Herscu discloses selecting a new remedy according to said further information; and comparing said new remedy to said remedy being previously selected (col. 14, lines 1-14 of Herscu).

(I) Referring to claim 14, Herscu discloses providing feedback to the practitioner about said essence of said condition (col. 3, line 45 – col. 4, line 26 of Herscu).

(J) Referring to claim 18, Herscu discloses wherein said case taking further comprises using at least one graphical tool for manipulating at least one word (col. 13, lines 19-47 of Herscu).

(K) Referring to claim 19, Herscu discloses wherein said organizing the symptoms further comprises tagging symptoms for correlation between said organizing and at least one stage of analyzing, selecting a remedy or selecting a potency (col. 13, lines 19-47 of Herscu).

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herscu (5,797,839).

(A) Referring to claim 7, Herscu discloses diagnosing a chronic condition; and examining a selected remedy to determine suitability for conditions (col. 4, line 52 – col. 5, line 10 and col. 13, line 61 – col. 14, line 14 of Herscu).

Herscu does not expressly disclose diagnosing an acute condition and an epidemic. However, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to include acute conditions and epidemics with the motivation of using the system for a variety of situations.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herscu (5,797,839) in view of Herscu 2 (US 2002/0010391 A1).

(A) Referring to claim 10, Herscu does not disclose selecting a potency of said remedy according to at least one rule. However, Herscu 2 discloses selecting a potency of said remedy according to at least one rule (see para. 78 of Herscu 2).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Herscu 2 within Herscu. The

motivation for doing so would have been to determine the effectiveness of the remedy (para. 18 of Herscu 2).

15. Claims 11, 12, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herscu (5,797,839) in view of Papageorge (US 6,584,445 B2).

(A) Referring to claim 11, Herscu discloses wherein said comparing is performed according to analysis of information (col. 3, lines 45-60 of Herscu).

Herscu does not expressly disclose that the information is from a plurality of different practitioners.

Papageorge discloses gathering information from a plurality of different practitioners (see col. 7, lines 33-65 of Papageorge).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Papageorge within Herscu. The motivation for doing so would have been for all parties involved to have more information available to them (col. 7, lines 33-65 of Papageorge).

(B) Referring to claim 12, Herscu discloses providing feedback according to said analysis (col. 3, line 45 – col. 4, line 26 of Herscu).

(C) Referring to claim 15, Herscu discloses wherein said feedback is based upon analysis of information from a plurality of previous consultations with different patients (col. 3, lines 45-60 of Herscu).

Herscu does not disclose that the analysis is statistical. Papageorge discloses statistical analysis (see col. 7, lines 41-65 of Papageorge).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Papageorge within Herscu. The motivation for doing so would have been to identify patterns (col. 7, lines 41-65 of Papageorge).

(D) Referring to claim 16, Herscu does not expressly disclose wherein said previous consultations are from different practitioners.

Papageorge discloses gathering information from different practitioners (see col. 7, lines 33-65 of Papageorge).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Papageorge within Herscu. The motivation for doing so would have been for all parties involved to have more information available to them (col. 7, lines 33-65 of Papageorge).

16. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herscu (5,797,839) in view of Papageorge (US 6,584,445 B2), and further in view of Kelly et al. (US 2003/0061070 A1).

(A) Referring to claim 13, Herscu and Papageorge do not disclose wherein said feedback includes teaching information for a student practitioner.



Kelly discloses wherein said feedback includes teaching information for a student practitioner (para. 20 and para. 22 of Kelly).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Kelly within Herscu and Papageorge. The motivation for doing so would have been to provide a medical training system which interactively engages the student (see abstract of Kelly).

17. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herscu (5,797,839) in view of Pugliese (US 2003/0234821 A1).

(A) Referring to claim 17, Herscu does not disclose providing a dictionary for automatic word completion of at least one word at least during said case taking.

However, the aforementioned feature is old and well-known, as evidenced by Pugliese (see para. 4 of Pugliese). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the feature of Pugliese within Herscu. The motivation for doing so would have been to minimize inputting time.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a system and method for reporting behavioral health care data (6,067,523); a web-based medical diagnostic and training system (US 6,991,464 B2); and a method for information and management system for health care (US 2004/0267570 A1).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./  
Examiner, Art Unit 3686  
In  
10/22/08

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686